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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re DOMINIC G. et al., Persons Coming Under
the Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

S.H.,

Defendant and Appellant.

F078080

(Super. Ct. Nos. 18CEJ300117-1,
18CEJ300117-2)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Fresno County. Gary Green,
Commissioner.

Suzanne M. Nicholson, under appointment by the Court of Appeal, for Defendant
and Appellant.

Daniel C. Cederborg, County Counsel, and Kevin A. Stimmel, Deputy County
Counsel, for Plaintiff and Respondent.

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* Before Detjen, Acting P.J., Peña, J. and DeSantos, J.

In August 2018, following a contested dispositional hearing, the juvenile court denied S.H. (mother) reunification services as to her then three-year-old son Dominic G. and one-year-old daughter J.N. under Welfare and Institutions Code section 361.5, subdivision (b)(5) and (6)(A).¹ The court ordered reunification services for the children's fathers and set a review hearing. On appeal, mother contends there was insufficient evidence to support denial of services under either subdivision of section 361.5. We affirm.

PROCEDURAL AND FACTUAL SUMMARY

In April 2018, Fresno police officers responded to a call at mother's residence concerning a female kicking a child. Mother and the children, then three-year-old Dominic and 10-month-old J.N., had been living with Joe N., mother's boyfriend and J.N.'s father, and Joe's parents for approximately two months. There was an active restraining order protecting mother and the children from Joe. Joe ran out of the house when the police arrived.

Police officers observed mother yelling and screaming at a male who later identified himself as Jose M., Joe's father. Jose was holding Dominic as mother continued to yell at him. In detaining mother, the police noted she smelled of alcohol, her speech was slurred, and her eyes were red and watery. She refused to give a statement and continued to cuss, scream, and yell. When the officers placed her in the back seat of the patrol car, she began kicking and slamming her head against the caged partition. She was placed on an involuntary psychiatric hold and booked into the Fresno County jail on felony child endangerment charges. She had no recollection of the incident and remained incarcerated throughout these proceedings.

Jose stated he was in his room when he heard mother and Joe arguing. Joe left but mother continued to yell. Jose also heard Dominic crying. Jose walked toward mother's

¹ Statutory references are to the Welfare and Institutions Code.

bedroom, fearing she was abusing Dominic as she had in the past after she and Joe argued. Through the open door he saw her standing over Dominic who was pinned in between the bed and playpen. She lifted her leg one to two feet off the ground and forcefully “stomped down” on Dominic’s chest. She lifted her leg a second time, again stomping the child. Jose saw the terrified look in Dominic’s face as mother stomped him and heard him cry in pain. Jose ran toward mother but not before she was able to strike Dominic a third time. Jose grabbed Dominic, walked outside, and called the police. Jose said this was an ongoing issue with mother and he believed she suffered from untreated mental illness. The family had seen her mistreat Dominic before by grabbing him by the ear, pulling his hair, or hitting him when she got angry at Joe.

Officer Miguel Archan asked Dominic what happened. He said mother got mad at him. Dominic lifted his shirt and Archan saw red marks across his chest. He was transported to the hospital and treated in the emergency room. X-rays revealed no internal injuries. However, while X-raying him, the medical staff located several bruises on his legs, upper thighs, shin area, back, chest, temple, forehead, and the back of his ear. It appeared that some of the bruising was older but it was clear that Dominic had been struck several times over a period of time. Archan noted that the bruises on Dominic’s upper thighs were long and narrow, like fingers, and that Dominic had a large new bruise on his upper forearm, which was still red and fresh. He also had bruising on both hips, which Archan believed may have been caused when mother stomped on him, causing his lower body to bounce off of his playpen, which he was lying against during the incident.

Archan believed Dominic had been a victim of ongoing abuse or had witnessed something else in his life. While at the hospital waiting for the social worker, he and the nurse witnessed Dominic choking his teddy bear and saying, “I’m going to f***** kill you.” Archan tried to talk to Dominic but Dominic was unable to verbalize information, complete sentences, or describe what happened because of his young age.

Social worker Jennifer Gaxiola-Mendoza also noted that Dominic's bruises appeared to be at different stages of healing and the bruises on his left arm and upper thighs were consistent with the shape and size of fingers. She also tried unsuccessfully to obtain more information from Dominic. The emergency room physician discharged Dominic and he and J.N. were taken into protective custody.

Social worker Leng Cha spoke to mother at the county jail. Mother stated she and Joe engaged in domestic violence, which Dominic witnessed. Dominic had seen Joe hit and choke her and throw her to the floor. Dominic was a happy and well-behaved child until they moved in with Joe and his family two months before. Since then he acted out and was violent with other children. She moved in with Joe, despite the restraining order, because he promised he would change. She said she was very intoxicated on the day of the incident and did not remember what happened, but knew Joe was the trigger. This was the second time she abused Dominic. The first time occurred around Dominic's birthday in March 2018, when she slapped him across the face. She started using marijuana when she was approximately 18 years of age and started drinking to intoxication sometime in 2015. She was diagnosed with posttraumatic stress disorder, depression, and anxiety at the age of 18. She was not taking any prescription medication for her mental health conditions.

The Fresno County Department of Social Services (department) filed a dependency petition on Dominic's behalf under section 300, subdivision (e) (severe physical abuse) and on behalf of both children under subdivisions (a) (serious physical abuse) and (b)(1) (failure to protect). In its report for the detention hearing, the department stated mother might not be eligible for reunification services.

The juvenile court detained the children and set the matter for a jurisdictional hearing. The court ordered the department to offer the fathers of the children services pending disposition of the case. The court did not authorize the department to offer

mother services, but ordered it to assess her for them, and granted it discretion to arrange therapeutically supervised visits.

Mother appeared in custody with her attorney at the jurisdictional hearing and submitted the allegations of the petition on the department's report. The juvenile court sustained the petition after finding she knowingly and willingly gave up her trial rights and adjudged the children dependents on the statutory grounds alleged. Counsel for the department informed the court mother pled guilty to the felony charge and was awaiting sentencing. Minors' counsel asked the court to find that visitation with mother would be detrimental to the children. Over mother's objection, the court made the detriment finding but stated it was not a permanent order. The court allowed photo and letter exchanges between mother and the children.

In its report for the dispositional hearing, the department recommended the juvenile court order reunification services for the children's fathers, but deny mother services under section 361.5, subdivision (b)(5) and (6) based on the severity of Dominic's injuries. Although she had never received services, the department did not believe services would prevent her from reabusing the children given her intoxicated state during the abuse, history of domestic violence, and refusal to take responsibility for her actions. Nor did the department believe the children's best interests would be served by reunifying with mother. They were doing well in the care of foster parents and were not in need of mental health services.

Mother wanted to reunify with her children. She regretted abusing Dominic and realized she needed mental health and substance abuse services. She was waiting to be evaluated by a psychologist and planned to obtain services after her release from custody.

The juvenile court conducted a contested dispositional hearing in August 2018. Mother appeared in custody, having been sentenced to either felony probation or two years in prison depending on diagnostic testing. Social worker Maricela Serrano testified the department considered various factors in deciding against reunification; the severity

of Dominic's abuse and mother's intoxication; the age of the children; mother's decision to live with Joe, despite the restraining order; and the possibility that incarceration would prevent her from participating in services. Asked whether mother could ameliorate the risk she posed to the children if she were provided services, Serrano said she could not predict.

Mother testified she participated in a parenting class for three months beginning in July 2017, while she was at a women's shelter. She took the class so she could better manage Dominic's rough play; he threw himself on the floor, threw toys, yelled, and hit. She did very well in the class and learned to use timeout for discipline. However, she left the shelter before she completed the class. Afterward, she was unable to return to the shelter to complete the class because she did not have reliable childcare or transportation. She also learned about domestic violence at the shelter; how to spot triggers and red flags. She was in a relationship with Joe during that time and he was calm and patient. She believed they would be able to resolve their disagreements by communicating. She got her own apartment on December 12, 2017, and the restraining order four days later. She moved back with Joe because she thought he changed and believed in giving people a second chance. Before she moved in with Joe, Dominic was better behaved, except when his father did not visit him. She admitted kicking Dominic on the date of the incident in April, while drunk.

During argument, the juvenile court allowed mother to make a statement. She admitted that her behavior was wrong and took full responsibility for it. She regretted not valuing her children enough to get help sooner. She did not believe she deserved reunification services because of the severity of the abuse she inflicted. However, she asserted she had a relationship with the children and did not want them separated. She vowed to attend every class if offered services. She was also taking advantage of any services available to inmates such as mental health and substance abuse services and was

getting her mental health condition under control. She completed Bible studies on spiritual healing and received a certificate.

The juvenile court adjudged the children dependents under section 300, subdivisions (a) and (b) and Dominic a dependent under subdivision (e), and denied mother reunification services under section 361.5, subdivision (b)(5) and (6)(A). In denying services, the court found providing mother reunification services was unlikely to prevent reabuse and was not in the children's best interests. The court ordered reunification services for the fathers of the children and set a six-month review hearing for February 2019.

DISCUSSION

The crux of mother's argument is two-part: (1) the juvenile court erred in denying her reunification services as to Dominic under section 361.5, subdivision (b)(5) because there was insufficient evidence to support the jurisdictional finding that he was a child described by section 300, subdivision (e), and (2) the juvenile court erred in denying her reunification services as to both children under section 361.5, subdivision (b)(6)(A) because it did not order her services at the detention hearing.² The failure to order services at the detention hearing, she argues, violated section 319, subdivision (g) (former § 319, subd. (e)) and prevented the court from making required findings, such as whether services were likely to prevent reabuse under section 361.5, subdivision (b)(5), whether services would benefit the children under section 361.5, subdivision (b)(6)(A) and

² Appellate counsel actually faults the department for the decision, arguing, "DSS's unilateral denial of services and visitation to mother prior to disposition prevented the court from assessing factors critical to its determination of whether it should order mother bypassed for services or whether reunification was in the children's best interest. Under these circumstances, the court acted outside the confines of the applicable law and abused its discretion." The juvenile court—not the department—decides whether a parent receives services.

whether services would serve the children’s best interests under section 361.5, subdivision (c).

A. Child Welfare Services Generally

The purpose of dependency statutes is to “provide maximum safety and protection for children who are ... being physically, sexually, or emotionally abused, being neglected, or being exploited and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm. This safety, protection, and physical and emotional well-being may include provision of a full array of social and health services to help the child and family and to prevent reabuse of children. The focus shall be on the preservation of the family as well as the safety, protection, and physical and emotional well-being of the child.” (§ 300.2.)

When the juvenile court orders a child detained, it must “order services to be provided as soon as possible to reunify the child and his or her family *if appropriate*.” (§ 319, subd. (g); italics added.) When the court removes a child from parental custody at the dispositional hearing, it “shall” provide reunification services to the child and the parents. (§ 361.5, subd. (a).) The purpose of providing reunification services is to “eliminate the conditions leading to loss of custody and facilitate reunification of parent and child. This furthers the goal of preservation of family, whenever possible.” (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478.) However, subdivision (b) of section 361.5 exempts from reunification services “ ‘those parents who are unlikely to benefit’ ” from such services or for whom reunification efforts are likely to be “ ‘fruitless.’ ” (*Jennifer S. v. Superior Court* (2017) 15 Cal.App.5th 1113, 1120.) The 17 different paragraphs set forth in subdivision (b) of section 361.5—which authorize denial of reunification services under various specific circumstances—are sometimes referred to as “ ‘bypass’ ” provisions. (*Melissa R. v. Superior Court* (2012) 207 Cal.App.4th 816, 821.)

Once it has been determined one of the bypass provisions applies, “ ‘the general rule favoring reunification is replaced by a legislative assumption that offering services

would be an unwise use of governmental resources.” ’ ” (*In re William B.* (2008) 163 Cal.App.4th 1220, 1227; accord, *In re A.G.* (2012) 207 Cal.App.4th 276, 281.) Thus, if the juvenile court finds a provision of section 361.5, subdivision (b), applies, the court “shall not order reunification for [the] parent ... unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.” (§ 361.5, subd. (c)(2).)³ “The burden is on the parent to ... show that reunification would serve the best interests of the child.” (*William B.*, at p. 1227; accord, *A.G.*, at p. 281.)

“We review an order denying reunification services under [section 361.5] for substantial evidence. [Citation.] Under such circumstances, we do not make credibility determinations or reweigh the evidence. [Citation.] Rather, we ‘review the entire record in the light most favorable to the trial court’s findings to determine if there is substantial evidence in the record to support those findings.’ [Citation.] In doing so, we are mindful of the higher standard of proof required in the court below when reunification bypass is ordered.” (*Jennifer S.*, *supra*, 15 Cal.App.5th at pp. 1121-1122.) If there is substantial evidence to support the order, the appellate court must uphold the order even if evidence could support a contrary holding. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251.)

When the juvenile court finds multiple statutory grounds for denying reunification services, we need only conclude substantial evidence supports one of them in order to affirm the juvenile court’s denial of services order. (*In re Brian M.* (2000) 82

³ Section 361.5, subdivision (c)(2) prohibits the juvenile court from ordering reunification services to a parent described in paragraphs (3) and (4) and (6) through (17) of subdivision (b) unless the court finds by clear and convincing evidence that reunification would be in the child’s best interest. Subdivision (c)(3) applies if the court finds the parent is described in paragraph (5). In that case, the court is prohibited from ordering services “unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to the parent.” (§ 361.5, subd. (c)(3).)

Cal.App.4th 1398, 1401.) In this case, we conclude the court properly denied services under section 361.5, subdivision (b)(6)(A).⁴

B. Section 361.5, subdivision (b)(6)(A)

A juvenile court may deny reunification services under section 361.5, subdivision (b)(6)(A) on clear and convincing evidence “[t]hat the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of ... the infliction of severe physical harm to the child, a sibling, or a half sibling by a parent ..., as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent” “A finding of the infliction of severe physical harm, for purposes of this subdivision, may be based on but is not limited to, deliberate and serious injury inflicted to or on the child’s body or the body of a sibling or half sibling by an act ... of the parent” (§ 361.5, subd. (b)(6)(C).) In determining whether services will benefit the child, the juvenile court must consider any information it deems relevant, including the specific act comprising the severe physical harm, the circumstances under which the harm was inflicted, the severity of the emotional trauma suffered, any history of abuse of other children by the parent, the likelihood the child could be safely returned to the parent’s care within 12 months without continuing supervision, and whether or not the child desires to be reunified with the parent. (§ 361.5, subd. (i)(1)-(6).)

Here, the juvenile court adjudged the children dependents under section 300, subdivision (a) after finding mother inflicted serious physical harm on Dominic and that J.N. was at risk of similar harm. The physical harm consisted of mother deliberately kicking Dominic in the chest approximately three times while intoxicated, resulting in

⁴ Our conclusion the juvenile court properly denied mother reunification services under subdivision (b)(6)(A) of section 361.5 obviates the need to review the evidence supporting its denial of services under subdivision (b)(5), including the jurisdictional finding as to Dominic under section 300, subdivision (e).

bruising on his chest, hip, and back. There was also evidence of prior abuse in that he had bruising on various parts of his body in multiple stages of healing. Mother admitted abusing him in March 2018, and family members witnessed her abuse him on other occasions. On those facts, the juvenile court could properly find by clear and convincing evidence mother severely physically abused Dominic.

Substantial evidence also supports the juvenile court's finding reunification services would not benefit the children. In ruling, the court focused on the severity of mother's abuse, noting that she stomped on Dominic's chest while she had him physically pinned between the bed and playpen, and on the severity of his emotional trauma; the terrified look on his face and his comments to his teddy bear. The court concluded, based on the severity of the abuse, the children could not be returned to mother's custody after 12 months of reunification services.

Mother does not dispute the evidence she inflicted severe physical harm on Dominic. Rather, she contends the juvenile court could not determine whether services would benefit the children without ordering services at the detention hearing, which she argues it was mandated to do under section 319, subdivision (g). She provides no legal authority, however, for her contention, including the statute, which requires the court to provide services only "if appropriate." She further argues the court's failure to provide services prior to disposition is reversible error, although she concedes she can find no case authority for that proposition. Nevertheless, she cites this court to *In re John B.* (1984) 159 Cal.App.3d 268 (*John B.*), a case she presents as analogous because it demonstrates the "department's abdication of its statutory obligation to provide [services]" and the result, i.e. reversal, when it does. We find *John B.* wholly distinguishable.

John B. arose from a denial of reunification services to the mother of a newborn at the dispositional hearing. The case was decided before section 361.5, subdivision (b) and its bypass provisions was enacted. The juvenile court in *John B.* denied the mother

services on the department's opinion that reunification would be futile in light of her history of psychiatric problems, hospitalizations, criminal activities, refusal of psychiatric treatment and failure to reunite with her three older children despite the assistance of social services. (*John B.*, *supra*, 159 Cal.App.3d at pp. 272-273.) The court reversed, holding that the statutory scheme at that time did not permit a court to "circumvent reunification endeavors whenever such efforts appear doomed to fail." The court continued, "We do not deem it appropriate to create such a judicial exception to the statutes." (*Id.* at p. 274.) In 1986, the Legislature enacted section 361.5, subdivision (b). (Stats. 1986, ch. 1122, § 13, pp. 3984-3986.)

John B. affirms a parent's right to parent his or her child and the importance of reunification services tailored to assist a parent in reunifying with that child. *John B.* says nothing about the provision of services prior to the dispositional hearing.

Finally, mother contends the juvenile court could not assess whether reunification services would serve the children's best interests without providing her services prior to disposition. However, she has failed to show any requirement that the court offer services to a parent before denying reunification services. Further, as we stated above, once the court decides one of the bypass exceptions applies it is prohibited from ordering services unless it finds by clear and convincing evidence reunification would serve the child's best interest.

In determining whether reunification would be in the child's best interest, the juvenile court should consider the parent's current efforts, fitness and history; the gravity of the problem that led to the dependency; the strength of the bonds between the parent and child and between the child and his or her caretakers; and the child's need for stability and continuity. (*In re William B.* (2008) 163 Cal.App.4th 1220, 1228.) Here, in deciding against services, the juvenile court found that Dominic suffered prior physical abuse based on the finger-like shape of the bruises and the fact they were healing at various stages. The court also found that mother's mistreatment of Dominic raised

questions about whether a genuine parent/child relationship existed between her and the children. The court concluded the children needed a stable, responsible care provider and therefore providing mother reunification services did not serve their best interests. We concur.

DISPOSITION

The juvenile court's August 28, 2018, order denying mother reunification services as to Dominic G. and J.N. is affirmed.